

**GATES & COOPER LLP**

**United States Patent Application**

**COMBINED DECLARATION AND POWER OF ATTORNEY**

As a below named inventor I hereby declare that my residence, post office address and citizenship are as stated below next to my name; that

I verily believe I am the original, first and sole inventor (if only one name is listed below) or a joint inventor (if plural inventors are named below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

**PHOTONIC DEVICE WITH SEGMENTED ABSORPTION DESIGN**

The specification of which:

a. ☒ is attached hereto.

b. ☐ was filed on \_\_\_\_\_ as United States Application Number or PCT International Application Number \_\_\_\_\_ and was amended on \_\_\_\_\_ (if applicable), which I have reviewed and for which I solicit a United States patent:

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to the patentability of this application in accordance with Title 37, Code of Federal Regulations, § 1.56 (attached hereto)

I hereby claim foreign priority benefits under Title 35, United States Code, § 119(a)-(d) or 365(b) of any foreign application(s) for patent or inventor's certificate or 365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below any foreign application for patent or inventor's certificate or any PCT application having a filing date before that of the application on the basis of which priority is claimed:

a. ☒ no such applications have been filed.

b. ☐ such applications have been filed as follows:

FOREIGN APPLICATION(S), IF ANY, CLAIMING PRIORITY UNDER 35 USC § 119			
COUNTRY	APPLICATION NUMBER	DATE OF FILING (day, month, year)	DATE OF ISSUE (day, month, year)
OTHER FOREIGN APPLICATION(S), IF ANY, FILED BEFORE THE PRIORITY APPLICATION(S)			
COUNTRY	APPLICATION NUMBER	DATE OF FILING (day, month, year)	DATE OF ISSUE (day, month, year)

I hereby claim the benefit under Title 35, United States Code, § 120 of any United States application(s), or 365(c) of any PCT international application(s) designating the United States of America, listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States or PCT international application in the manner provided by the first paragraph of Title 35, United States Code, § 112, I acknowledge the duty to disclose

material information as defined in Title 37, Code of Federal Regulations, § 1.56(a) which occurred between the filing date of the prior application and the national or PCT international filing date of this application.

U.S. PARENT APPLICATION OR PCT PARENT NUMBER	DATE OF FILING (day, month, year)	STATUS (patented, pending, abandoned)

I hereby claim the benefit under Title 35, United States Code § 119(e) of any United States provisional application(s) listed below:

U.S. PROVISIONAL APPLICATION NUMBER	DATE OF FILING (Day, Month, Year)
60/429,132	26 NOV 02

I hereby appoint the following attorneys to prosecute this application and to transact all business in the Patent and Trademark Office connected herewith:

George H. Gates	Registration No. 33,500
Victor G. Cooper	Registration No. 39,641
Karen S. Canady	Registration No. 39,927
William J. Wood	Registration No. 42,236
Jason S. Feldmar	Registration No. 39,187
Bradley K. Lortz	Registration No. 45,472


I hereby authorize them to act and rely on instructions from and communicate directly with the person/assignee/attorney/firm/ organization who/which first sends/sent this case to them and by whom/which I hereby declare that I have consented after full disclosure to be represented unless/until I instruct Gates & Cooper LLP to the contrary.

Please direct all correspondence in this case to the firm of Gates & Cooper LLP at the address indicated below:

**CUSTOMER NUMBER 22462**  
Gates & Cooper LLP  
Howard Hughes Center  
6701 Center Drive West, Suite 1050  
Los Angeles, California 90045  
(310) 641-8797

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

(1)	Full Name Of Inventor	Family Name WIPJEWSKI	First Given Name TORSTEN	Second Given Name
	Residence & Citizenship	City Kowloon	State or Foreign Country Hong Kong	Country of Citizenship Germany
	Post Office Address	Post Office Address 48D, Tower 1 Victoria Towers 188 Canton Road	City Kowloon	State & Zip Code/Country Hong Kong
Signature of Inventor(1): <i>Torsten Wipjewski</i>				Date: <i>Nov 26, 2003</i>
(2)	Full Name Of Inventor	Family Name KOZODOY	First Given Name PETER	Second Given Name
	Residence & Citizenship	City Santa Barbara	State or Foreign Country California	Country of Citizenship United States of America
	Post Office Address	Post Office Address 1625 Laguna Street, #16	City Santa Barbara	State & Zip Code/Country California 93101 / US
Signature of Inventor(2):				Date:

(1)	Full Name Of Inventor	Family Name WIPJEJEWSKI	First Given Name TORSTEN	Second Given Name
	Residence & Citizenship	City Kowloon	State or Foreign Country Hong Kong	Country of Citizenship Germany
	Post Office Address	Post Office Address 48D, Tower 1 Victoria Towers 188 Canton Road	City Kowloon	State & Zip Code/Country Hong Kong
Signature of Inventor(1):				Date:
(2)	Full Name Of Inventor	Family Name KOZODOY	First Given Name PETER	Second Given Name
	Residence & Citizenship	City Santa Barbara	State or Foreign Country California	Country of Citizenship United States of America
	Post Office Address	Post Office Address 1625 Laguna Street, #16	City Santa Barbara	State & Zip Code/Country California 93101 / US
Signature of Inventor(2): 				Date: 11/25/03

§ 1.56 Duty to disclose information material to patentability.

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is canceled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is canceled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

- (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
- (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

- (1) it establishes, by itself or in combination with other information, a *prima facie* case of unpatentability of a claim; or
- (2) it refutes, or is inconsistent with, a position the applicant takes in:
  - (i) opposing an argument of unpatentability relied on by the Office, or
  - (ii) asserting an argument of patentability

A *prima facie* case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

- (1) each inventor named in the application;
- (2) each attorney or agent who prepares or prosecutes the application; and
- (3) every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

(d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.

**SMALL BUSINESS**

**STATEMENT CLAIMING SMALL ENTITY STATUS  
(37 C.F.R. 1.9(f) AND 1.27(c)) – SMALL BUSINESS CONCERN**

I hereby state that I am:

☒ an official of the small business concern empowered to act on behalf of the concern identified below:

NAME OF CONCERN: Agility Communications, Inc.  
ADDRESS OF CONCERN: 600 Pine Avenue  
Goleta, California 93117

I hereby state that the above-identified small business concern qualifies as a small business as defined in 13 C.F.R. Part 121 for purposes of paying reduced fees to the United States Patent and Trademark Office. Questions related to size standards for a small business concern may be directed to: Small Business Administration, Size Standards Staff, 409 Third Street SW, Washington, DC 20416.

I hereby state that rights under contract or law have been conveyed to and remain with the small business concern identified above with regard to the invention, entitled: **PHOTONIC DEVICE WITH SEGMENTED ABSORPTION DESIGN** by inventor(s) Torsten Wipiejewski and Peter Kozodoy described in:

☒ the specification filed herewith.

If the rights held by the above-identified small business concern are not exclusive, each individual, concern or organization having rights to the invention listed below\* and no rights to the invention are held by any person, other than the inventor, who could not qualify as an independent inventor under 37 C.F.R. 1.9(c) or by any concern which would not qualify as a small business concern under 37 C.F.R. 1.9(d) or a nonprofit organization under 37 C.F.R. 1.9(e). \*NOTE: Separate verified statements are required from each named person, concern or organization having rights to the invention averring to their status as small entities. (37 C.F.R. 1.27)

NAME	_____	
ADDRESS	_____	
<input type="checkbox"/> INDIVIDUAL	<input type="checkbox"/> SMALL BUSINESS	<input type="checkbox"/> NONPROFIT ORGANIZATION
NAME	_____	
ADDRESS	_____	
<input type="checkbox"/> INDIVIDUAL	<input type="checkbox"/> SMALL BUSINESS	<input type="checkbox"/> NONPROFIT ORGANIZATION

I acknowledge the duty to file, in this application or patent, notification of any change in status resulting in loss of entitlement to small entity status prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as small entity is no longer appropriate. (37 C.F.R. 1.28(b))

NAME: Ron Nelson  
TITLE: President & CEO  
ADDRESS: 600 Pine Avenue  
Goleta, California 93117

SIGNATURE: \_\_\_\_\_

DATE: 11/25/03